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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,410	08/18/2000	Alice Mary O'Donnell-Kiely		7256

Alice O Kiely
71 Stonewall Court
Yorktown Heights, NY 10598-1819

7590

08/11/2010

EXAMINER

CHAWLA, JYOTI

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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08/11/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Mailed:

AUG 11 2010

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In re application of

Kiely

Serial No. 09/641,410

Filed: August 18, 2000

For: COMPOSITE CANDY SUPPORT FOR FROZEN
COMESTIBLES WITH OPTIONAL, EDIBLE MESS
GUARDS AND DRIP GUARDS

DECISION ON
PETITION

This is a decision on the PETITION FILED UNDER 37 CFR 1.181 on March 29, 2010 to withdraw the Finality of the Office Action dated July 9, 2009 and to have the Notice of Abandonment withdrawn since the Final Office Action is improper. Applicant asserts that the Finality of the Office Action is improper because the Examiner failed to address every argument of Applicant under MPEP 707.07(f) and that the holding of abandonment should be removed because of the improper final.

A review of the record shows that the Final Rejection was mailed on July 9, 2009. Applicant submitted an amendment after final on October 9, 2009. An Advisory was mailed out October 26, 2009. Applicant submitted another amendment after final on November 23, 2009. An Advisory action was mailed on January 28, 2010 and the notice of abandonment was mailed out on February 3, 2010. The Final Office Action addressed Applicant's submission of March 16, 2009. In that submission previously examined claims 1-382 were cancelled and new claims 383-416 were added. Newly submitted claims 403-416 were directed to a method of making a support and since Applicant had elected a product in a response to a previous election requirement, claims 403-416 were not examined. Claims 383-402 were examined.

In order to provide a complete application file history and to enhance the clarity of the prosecution history record, an Examiner must provide clear explanations of all actions taken by the Examiner during prosecution of an application. The Examiner issued a 15 page Final Office Action of which over 2 pages addressed Applicant's arguments. Applicant references a telephone conversation on January 29, 2010 with the Examiner whereby Applicant asserts the Examiner admits that the rejections were based on a truncated portion of Applicant's claims. Applicant further asserts that the Examiner admitted to the Applicant that the Examiner is not making a 102 rejection but a 103 rejection. A review of the file does not indicate that a interview summary was made of record however a review of the record does show that in the Final Rejection both 35 USC 102 and 103 rejections along with 35 USC 112(1) and 112(2) rejections were made.

Under present practice, second or any subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by Applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). Once a final rejection that is not premature has been entered in an application, Applicant no longer has any

right to unrestricted further prosecution. This does not mean that no further amendment or argument will be considered. Any amendment that will place the application either in condition for allowance or in better form for appeal may be entered.

A review of the record indicates that the amendment filed by Applicant necessitated the new ground(s) of rejection presented in this Office Action. The Finality of the Office Action was not premature or improper. Because the finality is proper, the holding of abandonment is maintained and not withdrawn.

DECISION

The petition is **DENIED**.

A review of the application indicates that Applicant has been prosecuting the application without the aid of a Patent Agent or Attorney. The Patent Examining Corps mails a Notice of Abandonment form PTOL-1432 in all applications which become abandoned for failure to prosecute. In any instance, if action is not taken promptly after receiving the notice of abandonment, appropriate relief may not be granted.

The Inventors Assistance Center (IAC) provides patent information and services to the public. The IAC is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure. IAC can answer general questions regarding patent examining policy; direct your call to appropriate USPTO personnel, as necessary; assist you with filling out forms; provide you with general information concerning rules, procedures, and fees; and send you patenting information via mail or facsimile. IAC cannot answer questions concerning a particular patent application; or give an opinion as to whether an invention is patentable or provide legal advice. You can contact the IAC at **800-PTO-9199** (800-786-9199).

Upon dialing the above telephone number, you will first reach an automated information system. Often, the information sought can be obtained without speaking to an IAC representative. If you do not find the necessary information using the automated information system, your call will be forwarded to a USPTO Contact Center (UCC) operator who can provide literature on patent topics, send you forms, and answer basic questions. The UCC operator will transfer calls to the IAC as necessary. Currently, the IAC handles approximately 320 calls per day. So that we may assist all of our customers, we ask that you limit your calls to a reasonable length of time. A review of the materials available by mail or on the USPTO Web Site (www.uspto.gov) prior to your call will make your questions more meaningful and should provide the IAC staff with a better opportunity to properly answer your questions.

/W. GARY JONES/
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